HON'BLE SRI JUSTICE A. GOPAL REDDY

WRIT PETITION NO.15158 OF 1995

DATE:07.03.2007

Between:

A. Srihari

..... PETITIONER

AND

Addl.Industrial Tribunal-cum-Addl. Labour Court, Hyderabad, rep. By its Presiding Officer & another.

.....RESPONDENTS

HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P. No.15158 OF 1995

ORDER:

The petitioner invoked the certiorary jurisdiction of this Court to call for the records relating to passing of award dated 17.10.1994 in

I.D.No.109 of 1990 on the file of first respondent and to quash the same as arbitrary and illegal and to direct the second respondent to reinstate the petitioner into service along with the back wages with all attendant benefits.

The petitioner was appointed as a Helper in the second respondent Corporation on 23.5.1985 on daily wage basis. It is his case that he has continuously worked from 23.5.1985 to 10.12.1989, on which date, his services were orally terminated without issuing any notice or pay wages in lieu of notice. Further, he was not paid retrenchment compensation and helpers, who are juniors to him, were retained. Alleging so, he raised an industrial dispute in I.D.No.109 of 1990 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, first respondent herein seeking reinstatement with continuity of service and back wages. The second respondent i.e. A.P. Small Scale Industries Development Corporation Ltd., filed a counter denying the allegations made by the petitioner. It was their case that the petitioner has not worked continuously from 23.5.1985 to 10.12.1989 and whereas, he worked off and on. In the counter, the number of working days of petitioner for the relevant period was mentioned as under:

Month/Year	No. of days worked
1. April, 1984 to March, 1985	45
2. April, 1985 to March, 1986	199 ½
3. April, 1986 to March, 1987	254 ½
4. April, 1987 to August, 1988	132 ½

It was alleged that the petitioner has abruptly stopped to attend the duty from 22.8.1988 without any intimation to the management of the second respondent Corporation and made a request for issuance of a service certificate for seeking employment elsewhere and accordingly he was issued a certificate on 20.1.1990. Therefore, he is not entitled to any relief.

To substantiate his claim, the petitioner himself examined as

W.W.1 and filed Exs.W.1 to W.7. On behalf of the second respondent Corporation, Assistant Accounts Officer was examined as M.W.1 and Accountant was examined as M.W.2 and filed Exs.M.1 to M.12. The Labour Court after considering the evidence, both oral and documentary, adduced by the parties, held that it is the petitioner who expressed his unwillingness to work by asking for his service certificate in Ex.M.1 application. He was not continuously working and he was absenting himself frequently as can be seen from the number of working days as extracted at para 5 in the award. It was also held that as per the evidence of M.Ws.1 and 2, the management of the second respondent Corporation would be calling the petitioner as and when they have work and they would not have work on every day. The petitioner himself absented to the job in 1988 and as some of the casual employees were regularized in 1989, he took Ex.W.1 service certificate by giving Ex.M.1 application on 17.1.1990 and raised the dispute on 16.2.1990. Having observed so, the Labour Court held that the petitioner is not entitled to any relief as sought for. Questioning the said award, the present Writ Petition is filed alleging that Section 2(5) of the Industrial Disputes Act (for short 'the Act') does not require a person to work for 240 days in the last year of employment to fall under the definition of workman or claim any relief under the Act. The Labour Court failed to appreciate that while applying for service certificate, the petitioner has to state the purpose of obtaining a certificate and if he states that the said certificate is needed to file an I.D. in the Labour Court, it would not be issued to him by the authorities. Further, in the cross-examination, M.W.2 deposed that the second respondent Corporation had a practice of initiating disciplinary proceedings against the employees for absenteeism. But the same was not initiated against the petitioner and hence it is clear that there was no abandonment of job by the petitioner and it was a case of termination without following the mandatory provisions of Chapter V-A and V-B of the Act. Therefore, the award is vitiated and the same is liable to be set aside.

Opposing the claim of the petitioner, though Sri M.L. Prem Rao filed vakalat for second respondent Corporation, has not appeared before the Court.

Learned counsel for the petitioner reiterated the contentions that were raised in the grounds filed in support of the writ petition and contends that the management of the second respondent Corporation abruptly stopped the petitioner from attending the duties without any notice. Even as per the contents in the counter, the petitioner had worked for 254 days for the period from April 1986 to March, 1987 and therefore, his services cannot be terminated without complying the statutory provisions of the Act and therefore, the petitioner is entitled for reinstatement.

The point that arises for consideration is whether the award passed by the Labour Court suffers from any infirmity warranting exercise of certiorary jurisdiction of this court.

The petitioner has not denied or disputed the fact of his making Ex.M.1 application on 17.1.1990 requesting the second respondent Corporation for issuance of service certificate for seeking employment elsewhere. The service certificate Ex.W.1 was issued to the petitioner on 20.1.1990. Even if the contention of the petitioner is accepted that if he insists for issuance of service certificate for the purpose of raising industrial dispute, the management of the second respondent Corporation would not have issued the said certificate, but the fact remains that he has raised the dispute on 16.7.1990 i.e. nearly after six months of issuance of Ex.W.1 certificate on 20.1.1990. From the said fact, it is clear that as he failed to secure employment elsewhere he raised the industrial dispute. Further, when the petitioner was not allowed to attend the duties as pleaded by him from 10.12.1989, what prevented him from raising a dispute till 16.7.1990 is not forthcoming.

This court while exercising the certiorary jurisdiction, will not sit in appeal and set aside the findings unless they are so perverse

or the findings are contrary to the evidence on record and suffers from incurable legal infirmities. The Labour Court after analyzing the evidence adduced by both the parties, has rightly held that the petitioner is not entitled for any relief. The said findings are based on appreciation of the evidence adduced by the parties. I see no grounds to interfere with the impugned award.

Accordingly, the Writ Petition is dismissed. No costs.

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A. GOPAL REDDY, J

07th MARCH, 2007.
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